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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10 **AT TACOMA**

11 THE UNITED STATES OF AMERICA,)
12 THE STATE OF WASHINGTON, THE)
13 MUCKLESHOOT INDIAN TRIBE, and)
14 THE PUYALLUP TRIBE OF INDIANS,)

Civil Action No. _____

15 Plaintiffs,)

16 v.)

17 PUGET SOUND ENERGY, INC.)

18 Defendant.)
19 _____)

20 **COMPLAINT**

21 The United States of America, by authority of the Attorney General of the United States,
22 and acting at the request of the United States Department of the Interior (“DOI”); the United
23 States Department of Agriculture, Forest Service (“Forest Service”); and the National Oceanic
24 and Atmospheric Administration (“NOAA”), and the State of Washington, the Muckleshoot
25 Indian Tribe, and the Puyallup Tribe of Indians, file this complaint and allege as follows:

26 COMPLAINT

27 Environmental Enforcement Section
28 U.S. Department of Justice
P.O. Box 7611
Washington DC, 20009
(202) 514-5270

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NATURE OF THE ACTION

1. This is a civil action brought against Puget Sound Energy, Inc. (“PSE” or “Defendant”) pursuant to the Oil Pollution Act of 1990 (“OPA”), 33 U.S.C. § 2701 *et seq.*, seeking natural resource damages arising from a spill of 429 barrels, or 18,000 gallons, of oil into or upon navigable waters of the United States and/or adjoining shorelines.

JURISDICTION, VENUE AND AUTHORITY

2. This Court has jurisdiction over the Plaintiffs’ claims pursuant to 28 U.S.C. §§ 1331, 1345, and 1367, and Section 1017(b) of OPA, 33 U.S.C. § 2717(b).

3. Venue is proper in the Western District of Washington pursuant to 28 U.S.C. §§ 1391 and 1395(a) and Section 1017(b) of OPA, 33 U.S.C. § 2717(b), because it is the judicial district in which the oil discharge and resulting injuries occurred.

4. Authority to bring this action on behalf of the United States is vested in the Department of Justice pursuant to 28 U.S.C. §§ 516 and 519.

DEFENDANT

5. Defendant PSE is a corporation which is incorporated in the State of Washington.

6. PSE is a “person” within the meaning of Section 1001(27) of OPA, 33 U.S.C. § 2107(27).

7. PSE operates the Crystal Mountain Emergency Generation Facility (“Crystal Mountain Facility”), located near Greenwater, Pierce County, Washington, associated with the oil discharge.

STATUTORY BACKGROUND

8. Section 1002(a) of OPA, 33 U.S.C. § 2702(a), provides that “each responsible party for . . . a facility from which oil is discharged, or which poses the substantial threat of a discharge of oil, into or upon the navigable waters or adjoining shorelines . . . is liable

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1 for the removal costs and damages . . . that result from such incident.”

2 9. Section 1001(32) of OPA, 33 U.S.C. § 2701(32) defines “responsible party” to
3 include, “[i]n the case of an onshore facility . . . any person owning or operating the facility. . . .”

4 10. The term “facility” means “any structure, group of structures, equipment, or
5 device . . . which is used for one or more of the following purposes: exploring for, drilling for,
6 producing, storing, handling, transferring, processing, or transporting oil,” and the term “onshore
7 facility” means “any facility . . . of any kind located in, on, or under, any land within the United
8 States other than submerged land.” 33 U.S.C. §§ 2701(9) and (24).

9 11. The term “discharge” includes any “. . . spilling, leaking, pumping, pouring,
10 emitting, emptying, or dumping . . .” pursuant to Section 1001(7) of OPA, 33 U.S.C. § 2701(7).

11 12. “Damages” for which a responsible party is liable, pursuant to Section 1002(a) of
12 OPA, 33 U.S.C. § 2702(a), include, “[d]amages for injury to, destruction of, loss of, or loss of
13 use of, natural resources, including the reasonable costs of assessing the damage”
14 33 U.S.C. §§ 2701(5) and 2702(b)(2).

15 13. Pursuant to Section 1006 of OPA, 33 U.S.C. § 2706, DOI, the Forest Service, and
16 NOAA have been designated federal trustees for natural resources in and along Silver Creek.

17 **GENERAL ALLEGATIONS**

18 14. The Crystal Mountain Facility is an “onshore facility” within the meaning of
19 Section 1001(24) of OPA, 33 U.S.C. § 2701(24).

20 15. On or about November 3, 2006, an aboveground diesel fuel storage tank, part of
21 an emergency generator at PSE’s Crystal Mountain Facility, overflowed and discharged
22 approximately 429 barrels, or 18,000 gallons, of diesel fuel.

23 16. Diesel fuel is an “oil” within the meaning of Section 1001(23) of OPA, 33 U.S.C.
24 § 2701(23).

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17 The discharged oil spilled onto Mount Baker-Snoqualmie National Forest land,
administered by the Forest Service.

18. Spill responders observed a sheen of diesel fuel on Silver Creek which is located approximately 750 feet downgradient from the Crystal Mountain Facility.

19. Silver Creek is a tributary of the White River and a “navigable water” within the meaning of Section 1001(21) of OPA, 33 U.S.C. § 2701(21).

20. The United States undertook a removal action in response to the discharge of oil from the Crystal Mountain Facility into navigable waters and/or upon the adjoining shorelines.

21. The discharged oil caused injuries to natural resources in and along Silver Creek, including injuries to important salmon and trout habitat.

22. Damages to natural resources caused by the discharge of oil, including the costs of assessment of natural resource damages and future restoration, total approximately \$560,000.

23. The discharge of oil was not authorized by OPA, or any other federal, state, or local government law, regulation, or ordinance.

CLAIM FOR RELIEF

Natural Resource Damages under Section 1002(a) of OPA

24. The allegations of the foregoing paragraphs are incorporated herein by reference.

25. “Natural resources,” as that term is defined in Section 1001(20) of OPA, 33 U.S.C. § 2701(20), have been injured, destroyed or lost as the result of the discharge or substantial threat of discharge of oil into or upon navigable waters or adjoining shorelines, within the meaning of Section 1002(b)(2) of OPA, 33 U.S.C. § 2702(b)(2).

26. As a responsible party for a facility from which oil was discharged, and from which there existed a substantial threat of further discharges, into or upon navigable waters or adjoining shorelines, PSE is liable, pursuant to Section 1002(a) of OPA, 33 U.S.C. § 2702(a), for

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1 damages caused thereby, including but not limited to damages for injury to, destruction of, loss
2 of or loss of use of natural resources (and as defined in Section 1006(d)(1) of OPA, 33 U.S.C.
3 § 2706(d)(1)).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiffs, the United States of America; the State of Washington; the
6 Muckleshoot Indian Tribe; and the Puyallup Tribe of Indians, respectfully request that the Court:

- 7 1. Award damages for injury to natural resources and costs of assessment;
8 2. Award the Plaintiffs their costs of this action; and
9 3. Award such other and further relief as the Court deems appropriate.

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11 Date: November 25, 2008

Respectfully submitted,

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13 FOR THE UNITED STATES: -----

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